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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

LUMBSDEN A. SANGSTER,

Plaintiff and Appellant,

v.

SAN BERNARDINO COUNTY SHERIFF  
DEPARTMENT,

Defendant and Respondent.

E053242

(Super.Ct.No. CIVVS1005048)

OPINION

APPEAL from the Superior Court of San Bernardino County. Marsha Slough,  
Judge. Affirmed.

Lumbsden A. Sangster, in pro. per., for Plaintiff and Appellant.

Jean-Rene Basle, County Counsel, and Teresa M. McGowan, Deputy County  
Counsel, for Defendant and Respondent.

On December 14, 2010, plaintiff and appellant Lumbsden A. Sangster filed an  
amended complaint for malicious prosecution, emotional distress, general negligence,  
intentional tort, and premises liability against defendant and respondent San Bernardino

County Sheriff Department. Sangster alleged police misconduct in responding to and investigating an incident on January 7, 2007. Defendant demurred on the grounds that Sangster failed to comply with the Government Tort Claims Act (Gov. Code,<sup>1</sup> § 810 et seq.). The trial court sustained the demurrer without leave to amend, and judgment of dismissal was entered.

On appeal, Sangster contends the trial court erred in ruling his claims were time barred. He also asserts that the court should have granted leave to file a second amended complaint rather than sustaining defendant's demurrer without leave to amend. We conclude the face of Sangster's amended complaint, along with the attached documents, establishes as matter of law that his complaint and underlying government claims were untimely. In addition, he has not established that he is able to amend his amended complaint successfully. We therefore affirm the judgment.

## I. PROCEDURAL BACKGROUND AND FACTS

A demurrer admits all the truth of all facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) Accordingly, we will refer to the allegations in the complaint for the chronology of this matter. (See *Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 954.) “[O]n review of a demurrer, in addition to the allegations of the complaint, we may consider other relevant matters of which the trial court could have taken judicial notice and we may treat such matters as having been

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<sup>1</sup> All further statutory references are to the Government Code unless otherwise noted.

pleaded. [Citations.]” (*Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 538.)

Sangster was arrested on January 7, 2007, and was housed at the West Valley Detention Center (Center). He was charged with attempted murder and personally inflicting great bodily injury. On April 8, 2009, while at the Center, he was attacked by another inmate. On August 7, 2009, he was exonerated of all charges by a jury. On July 20, 2010, Sangster filed a claim against San Bernardino County. He claimed police misconduct in responding to and investigating the incident on January 7, 2007. His claim was rejected on July 29, 2010, because it was untimely. Nonetheless, on August 3, 2010, he initiated this action against defendant by filing a complaint, which was later amended on December 14, 2010. He alleges that on or about January 7, 2007, defendant charged him with a crime that he was not convicted of committing. He accuses defendant of planting evidence, coaching witnesses, unnecessarily breaking windows, housing him in a cell where he was attacked, and wrongfully taking DNA from him.

Defendant demurred to the amended complaint, arguing that Sangster failed to timely comply with the Government Tort Claims Act, and that the demurrer was proper because the amended pleading was not subject to further amendment. The trial court agreed, sustained the demurrer without leave to amend, and on March 17, 2011, entered judgment of dismissal.

## II. STANDARD OF REVIEW

“On appeal, we review the trial court’s sustaining of a demurrer without leave to amend de novo, exercising our independent judgment as to whether a cause of action has

been stated as a matter of law. [Citations.] We assume the truth of properly pleaded allegations in the complaint and give the complaint a reasonable interpretation, reading it as a whole and with all its parts in their context. [Citations.] However, we may disregard allegations which are contrary to law or to a fact of which judicial notice may be taken. [Citations.]

“We apply the abuse of discretion standard in reviewing the trial court’s denial of leave to amend. [Citations.] When a demurrer is sustained without leave to amend, we determine whether there is a reasonable probability that the defect can be cured by amendment. [Citation.] The appellant bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. [Citations.]” (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 506-507.)

### III. THE TORT CLAIMS ACT

“According to Government Code section 815, subdivision (a), all governmental liability is governed by statute. [Citations.] As explained in *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405, 1414 . . . ‘governmental entities are immune from being sued unless the Legislature has specifically provided otherwise. The [Tort Claims] Act sets forth the limited circumstances under which the state and other political subdivisions may be sued and the applicable procedural requirements.’

“[Section] 900 et seq., part of the Tort Claims Act, ‘prescribes the manner in which public entities may be sued.’ [Citation.] [Section] 945.4 provides that “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with . . . Section 910 . . . until a

written claim therefor has been presented to the public entity and has been acted upon by the [public entity's] board, or has been deemed to have been rejected by the board . . . .”

[Citation.] The purposes of the claim filing requirement are: ‘(1) to give notice to the public entity so it will have a timely opportunity to investigate the claim and determine the facts; and (2) to give the public entity an opportunity to settle meritorious claims thereby avoiding unnecessary lawsuits.’ [Citations.]

“[Section] 911.2 requires that personal injury [and property] claims against a public entity be filed ‘not later than six months after the accrual of the cause of action.’ Alternatively, a late claim may be presented within a reasonable time after accrual, not to exceed one year. [Citation.] If the application to file a late claim is denied, a plaintiff may petition the court for an order relieving [him] from the claims presentation requirement. [Citation.] No action for money damages may be brought against a public entity unless a written claim has been presented to the entity and acted upon, or relief is granted from the claims requirements. [Citations.]

“The date of accrual of a cause of action marks the starting point for calculating the claims presentation period. [Citations.] ‘The general rule for defining the accrual of a cause of action sets the date as the time “when, under the substantive law, the wrongful act is done,” or the wrongful result occurs, and the consequent “liability arises.”

[Citation.] In other words, it sets the date as the time when the cause of action is complete with all of its elements [citations]—the elements being generically referred to by sets of terms such as “wrongdoing” or “wrongful conduct,” “cause” or “causation,” and “harm” or “injury” [citations].’ [Citations.] ‘A cause of action accrues for purposes

of the filing requirements of the Tort Claims Act on the same date a similar action against a nonpublic entity would be deemed to accrue for purposes of applying the relevant statute of limitations.’ [Citations.]” (*V.C. v. Los Angeles Unified School Dist., supra*, 139 Cal.App.4th at pp. 507-508.)

#### IV. DISCUSSION

Sangster contends the trial court erred in not granting him leave to file a second amended complaint. He argues that his delay in filing his claim is excused because he was ignorant, without representation of counsel, and the time was tolled while the charges against him were pending. (§ 945.3.)

Section 911.2, in relevant part, provides: “A claim relating to a cause of action for . . . injury to person or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action.” (§ 911.2, subd. (a).)

Section 945.3, in relevant part, provides: “No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court. [¶] Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court. [¶] . . . [¶] *Nothing in this section shall prohibit the filing of a claim with the board of a public entity, and this section shall not extend the*

*time within which a claim is required to be presented pursuant to Section 911.2.”*

(§ 945.3, italics added.)

The language in the statutes is clear. Sangster only had a limited period of time in which to file his claims against the County of San Bernardino. Although he was charged and prosecuted with a crime resulting from the incident on January 7, 2007, and he was not exonerated until August 7, 2009, the time to file a claim against defendant continued to run while the charges were pending before a superior court. By our calculation, Sangster had until July 7, 2007 (six months after January 7, 2007, arrest/charge incident), and then until October 8, 2009 (six months after April 8, 2009, attack at the Center), in which to file his claims for personal and property injuries stemming from those incidents. (§ 911.2.) According to the record before this court, Sangster did not file his claim until July 20, 2010, more than three and one half years following the January 7, 2007, incident, and more than one year following the April 8, 2009, incident. More importantly, as defendant points out, the claim never mentioned the April 8 incident. Because Sangster presented his claim well beyond the six-month time limit afforded by section 911.2, he was unable to initiate this action against defendant.

Nonetheless, Sangster argues he should have been allowed to file a second amended complaint. It is unclear how allowing him another bite at the apple would have remedied his failure to timely present his claim to the County of San Bernardino. In the event a claimant fails to present his claim within the six-month time limit, section 911.4, in relevant part, provides that “a written application may be made to the public entity for leave to present that claim.” However, “[t]he application shall be presented . . . within a

reasonable time *not to exceed one year after the accrual of the cause of action* and shall state the reason for the delay . . . .” (§ 911.4, subds. (a), (b), italics added.) Again, the outside time limit was one year. Thus, Sangster had to file no later than January 7, 2008 (arrest incident), and April 8, 2010 (attack incident).

Turning to the record before this court, Sangster argued for leave to file a second amended complaint, claiming that he “learned and be came [*sic*] aware of the cause of action on or about August 07, 2009,” that he did not have the “benefit of an attorney,” and that he “is ignorant in properly understand[ing] some of the procedures in bring[ing] action against defendant[.]” On appeal, he argues that he should be allowed leave to amend because his delay in filing a claim with the County of San Bernardino was due to the fact that charges were pending against him before a superior court, and his inability “to obtain an attorney and properly investigat[e] the cause of action . . . .” Unfortunately, Sangster never petitioned the County of San Bernardino to file a late claim. Accordingly, he is statutorily barred from doing so. As such, he is unable to file a second amended complaint because he is unable to plead that a timely claim was filed.

Based on the above, we conclude the trial court appropriately ruled that Sangster “failed to file a timely tort claim under the Government Tort Claims acts.” Having failed to submit a timely claim, Sangster’s amended complaint is barred under the Government Tort Claims Act, and the trial court did not err in sustaining without leave to amend defendant’s demurrer to Sangster’s amended complaint.



V. DISPOSITION

The judgment is affirmed. Defendant is awarded costs on appeal.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MCKINSTER

J.